



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 175822

PRELIMINARY RECITALS

Pursuant to a petition filed on July 28, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services regarding FoodShare (FS) benefits, a hearing was held on August 18, 2016, by telephone.

The issue for determination is whether the Department is entitled to recover and correctly issued an overpayment notice following a disqualification determination for an intentional program violation.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Prior to August 2016, the petitioner was a recipient of FS benefits.

3. On May 18, 2016 the Department of Health Services Milwaukee Enrollment Services (Department) prepared an Administrative Disqualification Hearing Notice alleging the petitioner intentionally transferred \$200 in FS benefits in exchange for a cash payment.
4. A hearing on the Administrative Disqualification regarding whether the petitioner committed an intentional program violation (IPV) was held on June 24, 2016 but the petitioner failed to appear.
5. On July 5, 2016 a Decision was entered finding the petitioner had intentionally violated, and intended to violate the FS program rule specifying that an FS recipient shall not knowingly transfer food coupons except to purchase food and sustaining the Department's action to disqualify the petitioner from FS program participation for one year.
6. On July 15, 2016 the Department issued a FS Overpayment Notice to petitioner in the amount of \$200 due to the IPV.
7. Petitioner acknowledged receipt of the July 5, 2016 Decision and the July 15, 2016 Overpayment Notice.
8. On July 28, 2016, the petitioner filed a Request for Fair Hearing appealing the FS overpayment.
9. The petitioner did not request a rehearing on the disqualification Decision for the IPV violation nor appeal the July 5, 2016 Decision.

DISCUSSION

The Department is required to recover all FS overpayments. The federal FS regulations provide that the agency shall establish a claim against an FS household that was either overpaid or when the benefits involve trafficking. 7 C.F.R. §273.18(a)(1). Trafficking is defined as "buying, selling, stealing, or otherwise effecting an exchange of [FS benefits]...for cash or consideration other than eligible food..." 7 C.F.R. §271.2. The amount of an overpayment claim involving trafficking and an IPV is determined by:

- (1) The individual's admission, or
- (2) The amount ordered through adjudication, or
- (3) The documentation that forms the basis for the trafficking charge.

7 C.F.R. §273.18(c)(2); FS Handbook, §7.3.2.5 (Release #16-01).

In the present case, the Department pursued a disqualification of the petitioner's FS benefits based upon an intentional program violation that included the sale or exchange of petitioner's FS benefits for \$200 cash. An IPV hearing was conducted before a state Administrative Law Judge that sustained the Department's determination finding the petitioner intentionally violated the FS program rule specifying that an FS recipient shall not knowingly transfer food coupons except to purchase food. Following the Judge's Decision, the Department issued an FS Overpayment Notice in the amount of \$200, which was the amount that formed the basis for the trafficking charge.

It was apparent at the hearing that petitioner was unhappy about the discontinuance of his FS benefits. However, the petitioner failed to request a rehearing of the IPV finding and resulting disqualification nor did he appeal the July 5, 2016 Decision within the requisite 30 days. Accordingly, based upon the above, the Department correctly issued an FS Overpayment Notice.

CONCLUSIONS OF LAW

The Department correctly issued an FS Overpayment Notice in the amount of \$200.00 and is entitled to recover the FS overpayment in the amount of \$200.00 from the petitioner.

THEREFORE, it is

ORDERED

That the petition for review herein by, and the same hereby is, dismissed in its entirety.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of August, 2016

\s _____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 22, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability